



COUNTY COMMISSIONERS

Carolina Mejia-Barahona  
District One

Gary Edwards  
District Two

Tye Menser  
District Three

**HEARING EXAMINER**

*Creating Solutions for Our Future*

**BEFORE THE HEARING EXAMINER  
FOR THURSTON COUNTY**

In the Matter of the Application of	)	No. 2021100286
	)	
<b>Tenino Land Company, LLC</b>	)	<b>Elks Landing</b>
	)	
For a Reasonable Use Exception	)	FINDINGS, CONCLUSIONS, AND DECISION
_____	)	

**SUMMARY OF DECISION**

The request for a reasonable use exception to allow continued use of an existing logging road, which crosses wetland and stream buffers, and to relocate a 600-foot segment of the road within a wetland buffer is **GRANTED**, subject to conditions.

**SUMMARY OF RECORD**

**Request**

Tenino Land Company, LLC (Applicant) requested a reasonable use exception (RUE) to allow continued use of an existing logging road, which crosses wetland and stream buffers, and to relocate a 600-foot segment of the road within a wetland buffer, to serve future development on five 40-acre parcels. The subject property is located on the north side of 123rd Avenue SE in Yelm and consists of Tax Parcel Numbers 21736100400, Parcel 21736100401, Parcel 21736100100, Parcel 21736100101, and Parcel 21736100102.

**Hearing Date**

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on November 9, 2021. The record was held open through November 11, 2021 to allow members of the public who may have had difficulty joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing comments were submitted, and the record closed on November 11, 2021. However, prior to decision issuance,

on November 24, 2021, the record was reopened allowing for additional information to be submitted clarifying some discrepancies in the record. The final item was submitted by the Applicant on December 23, 2021.

### **Testimony**

At the open record public hearing, the following individuals presented testimony under oath:

Sharon Lumbantobing, Senior Planner, Thurston County

Brandon Johnson, JSA Civil, Project Engineer

Timothy Haderly, Project Biologist

Attorney Heather Burgess represented the Applicant at the hearing.

### **Exhibits**

At the open record public hearing, the following exhibits were admitted into the record:

Exhibit 1 Community Planning and Economic Development Report including the following attachments:

- A. Notice of Public Hearing, dated October 21, 2021
- B. Master Application, received January 22, 2021
- C. Reasonable Use Exception Application, received January 22, 2021
- D. Zoning/Vicinity Map
- E. ~~[Stricken, replaced by Exhibit 5.3] Revised Roadway Plan, dated August 30, 2019~~
- F. Response to Comments, dated August 25, 2021
- G. [none submitted]
- H. SEPA Determination of Non-Significance, September 22, 2021
- I. SEPA checklist
- J. ~~[Stricken - replaced by Exhibit 5.1] Critical Areas Buffer Mitigation Plan for Site Access Road off 123<sup>rd</sup> Ave SE, Yelm, WA, by Loowit Consulting Group, dated December 28, 2020, revised August 12, 2021~~
- K. Mazama Pocket Gopher and Prairie Habitat Assessment Report, dated August 2021
- L. Wetland Delineation and Rating Report for Parcel 21736100400, dated July 2021
- M. Wetland and Stream Report for Parcel 21736100100, dated July 2021
- N. Wetland Report for Parcel 21736100102, dated July 2021
- O. Wetland and Stream Report for Parcel 21736100401, dated August 2021
- P. Wetland and Prairie Site Reconnaissance Results, dated November 22, 2019

- Q. Notice of Application, dated July 2, 2021, with adjacent property owner list
- R. Memorandum from Amy Crass, Thurston County Public Health and Social Services Department, dated March 1, 2021
- S. Comment Letter from the Washington State Department of Ecology, dated March 1, 2021
- T. Comment Letter from the Washington State Department of Ecology, dated July 22, 2021
- U. Squaxin Island Tribe comment letter, dated February 15, 2021
- V. Squaxin Island Tribe comment letter, dated July 8, 2021
- W. Nisqually Indian Tribe comment letter, dated February 24, 2021
- X. Nisqually Indian Tribe comment letter, dated March 1, 2021
- Y. Nisqually Indian Tribe comment letter, dated July 6, 2021
- Z. Confederated Tribes of the Chehalis Reservation comment letter, dated July 21, 2021
- AA. Public Comment from Dr. Walker, dated July 20, 2021
- BB. Conditional Preliminary Large Lot Approval – Tenino Land Company LLC, dated September 30, 2020 (Project 2019105497, Folder Sequence 19-113454-ZE, Tax Parcel 21736100101)
- CC. Conditional Preliminary Large Lot Approval – Tenino Land Company LLC, dated September 30, 2020 (Project 2019105529, Folder Sequence 19-113549-ZE, Tax Parcel 21736100400)
- ~~DD.~~ [Stricken, replaced by Exhibit 5.1] ~~Addendum to Mitigation Plan, dated October 1, 2021~~
- EE. Nisqually comment on DNS, dated October 4, 2021

Exhibit 2 Overall RUE Map

Exhibit 3 Applicant consultant resumes

- A. Resume of Timothy J. Haderly
- B. Resume of Brandon Johnson, P..E.

Exhibit 4 Hearing Examiner Order Requesting the Record to be Supplemented, issued November 24, 2021

Exhibit 5 Applicant’s Submittal Supplementing the Record, cover letter dated December 10, 2021 (.pdf page 1), with the following three attachments:

1. Critical Areas Buffer Mitigation Plan, Loowit Consulting Group, dated December 10, 2021 (replaces and supersedes Ex. I.J and Ex. I.DD) (.pdf pages 2 - 52)

2. JSA Civil Memorandum to Hearing Examiner, dated December 10, 2021 (.pdf pages 53-54)
3. Roadway Plans (revised November 27, 2021) (*replaces and supersedes Ex. 1.E*) (.pdf pages 55-61)

Exhibit 6 County Planning Staff's Response to Applicant's Supplemental Submittal, dated December 14, 2021

Exhibit 7 Applicant's Reply to Staff's Response, dated December 23, 2021

Based on the record developed through the virtual hearing process, the Hearing Examiner enters the following findings and conclusions.

### FINDINGS

1. Tenino Land Company LLC (Applicant) requested a reasonable use exception (RUE) to allow continued use of an existing logging road, which crosses wetland and stream buffers, and to relocate a 600-foot segment of the road within a wetland buffer, to serve future development on five 40-acre parcels. The subject property is located on the north side of 123rd Avenue SE in Yelm and consists of Tax Parcel Numbers 21736100400, 21736100401, 21736100100, 21736100101, and 21736100102.<sup>1</sup> *Exhibits 1, 1.B, 1.C, and 5.3.*
2. The RUE application was received on January 22, 2021 and deemed complete for purposes of commencing project review on February 18, 2021. *Exhibit 1.Q.*
3. The subject property is in the rural portion of the County and is zoned Rural Residential Resource One Dwelling Unit per Five Acres (RRR 1/5). *Exhibits 1 and 1.D.* Primary permitted uses in the RRR 1/5 zone include single-family and two-family residences, agriculture (including forest practices), home occupations, and accessory farm housing. *Thurston County Code (TCC) 20.09A.020.*
4. The subject parcels form a linear configuration, with Parcel 21736100400 (hereinafter called Parcel 1) abutting the north side of 123rd Avenue SE, Parcel 21736100401 (Parcel 2) immediately north of Parcel 21736100400, Parcel 21736100100 (Parcel 3) immediately north of Parcel 21736100401, and Parcel 21736100101 (Parcel 4) immediately north of Parcel 21736100100. Parcel 21736100102 (Parcel 5) is adjacent to the west side of Parcel 21736100101. At present there is a gravel road extending north from 123rd Avenue SE through the parcels, which was installed for previous logging activity authorized by the Department of Natural Resources. *Exhibits 1, 1.L, and 2.*
5. The southernmost of the parcels, Parcel 1 contains three Category III wetlands, identified in the submitted wetland reports as wetland rating unit (WRU) -A, WRU-B, and WRU-D.

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<sup>1</sup> The legal description of the five subject parcels is a portion of Section 36, Township 17 North, Range 1 East, W.M. *Exhibit 5.1.*

WRU-A crosses the southeast corner of the parcel, WRU-B is in the west-central portion of the parcel, and WRU-D (most of which is located on adjacent Parcel 2) crosses the northwest corner of the parcel. WRU-A and WRU-B each have habitat scores of 6, requiring a standard buffer width of 200 feet, which may be reduced to 150 feet with mitigation pursuant to TCC 24.30.050. WRU-D has a habitat score of 7, requiring a standard buffer width of 240 feet, which may be reduced to 180 feet with mitigation. *Exhibits 1.L, 1.O, and 5.2; TCC Table 24.30-2.* The existing logging road avoids these wetlands as it crosses the parcel, but its southernmost extent is within the 150-foot reduced buffer of WRU-A. The Applicant proposes to relocate this segment of the road to the west, allowing a minimum 150-foot buffer to be maintained from WRU-A. The road could not be moved 200 feet from WRU-A without intruding into the buffer of WRU-B. At the proposed location, the relocated road would not intrude into the buffers of either WRU-B or WRU-D.<sup>2</sup> *Exhibits 1.L and 2; Brandon Johnson Testimony.*

6. Parcel 2, to the north, contains a Category III wetland (WRU-D, described above), a Category IV wetland (WRU-E), and the buffer associated with a Category IV wetland (WRU-F) located on adjacent Parcel 3 further north. WRU-D bisects the parcel from east to west, with surface water flows passing through a culvert beneath the logging road. WRU-E is adjacent to the north side of WRU-D, and WRU-F is north of the northwest corner of the parcel, a significant distance from the road. A short segment of a Type Ns stream crosses the northwest corner of the parcel within the WRU-F buffer, and also crosses Parcel 3 to the north. As described previously, WRU-D has a habitat score of 7, requiring a standard buffer width of 240 feet, which may be reduced to 180 feet with mitigation. WRU-E has a habitat score of 6, requiring a standard buffer of 200 feet, which may be reduced to 150 feet with mitigation. WRU-F has a habitat score of 5, requiring a standard buffer width of 180 feet, which may be reduced to 135 feet with mitigation.<sup>3</sup> The Type Ns stream requires a 150-foot buffer. *Exhibit 1.O; TCC Table 24.30-2.* The existing logging road necessarily crosses WRU-D's buffer, but it is outside the buffers of WRU-E and WRU-F and the onsite portion of the stream. *Exhibit 1.O.*
7. Parcel 3 contains wetland WRU-F and the Type Ns stream described above. The stream bisects the parcel from east to west, roughly parallel to wetland WRU-D on Parcel 21736100401, and passes through a culvert beneath the existing logging road. The logging road necessarily crosses the stream's buffer, but it is outside the buffer of WRU-F. *Exhibit 1.M.*
8. Parcel 5, at the northwest terminus of the logging road, contains three Category IV wetlands. The wetlands each have habitat scores of 6, requiring standard buffers of 200

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<sup>2</sup> The initial wetland studies identified the wetlands with WRU prefixes (wetland rating units). Subsequent critical areas information changed the prefix of some wetlands from WRU to WL (wetland), but the lettering system of A through F is consistent. These findings refer to the regulated features either as WRU or Wetland followed by the appropriate letter; WRU-A, WL-A, and Wetland A are all the same feature.

<sup>3</sup> The undersigned takes notice that both the staff report (Exhibit 1, page 4) and the critical areas report (Exhibit 1.O, page 12) called out an allowed reduced buffer width of 150 feet with mitigation for WRU-F; however, 25% of 180 is 45 feet, meaning a 75% buffer width would be 135 feet for WRU-F.

feet, which may be reduced to 150 feet with mitigation. The road terminus is more than 200 feet from the wetlands. *Exhibit 1.N.*

9. The County has granted preliminary large lot subdivision approval for development proposed on Parcel 1 and Parcel 4.<sup>4</sup> The critical areas ordinance (CAO) requires that the lots be accessible by a legally existing or proposed road outside of critical areas, or as otherwise provided in the CAO (TCC 24.55.030.B), and specifies that “crossings of wetlands and/or buffers within areas proposed for development that were allowed by a State Forest Practices Permit but do not meet the requirements of this chapter, and any unlawfully established roads, shall be removed” and the roadbed restored. *TCC 24.30.280.E.* Consequently, both subdivisions were conditioned on fully permitting and constructing the road consistent with code standards, including relocating the road outside of the inner 150-foot buffer of wetland WRU-A. The subject RUE is a necessary permit due to the crossing of wetland and stream buffers. *Exhibits 1, 1.BB, and 1.CC.*
10. The Applicant completed road maintenance activities in 2019, including: mowing and removing vegetation from the traveled roadway, roadside ditches, and culverts; clearing ditches of woody debris, sloughed soil, and gravel; replacing culvert inlets and outlets; grading the road and ditch slopes; and laying new gravel on the road surface. No trees greater than six inches in diameter were removed. No expansion of the road prism in the existing stream and wetland crossings is proposed. *Exhibits 1.F and 5.1.* These activities impacted wetland and stream buffer in the following quantities: 5,318 square feet on Parcel 1, 6,219 square feet on Parcel 2, and 3,718 square feet on Parcel 3, for a total of 15,255 square feet.<sup>5</sup> *Exhibits 5.1 and 5.3.*
11. The Applicant proposes to mitigate these impacts at a slightly greater than 1:1 ratio by restoring the roadbed left by the proposed road relocation on Parcel 1 to a functional forested wetland buffer (a total mitigated area of 11,836 square feet), and by restoring the stream buffer on both sides of the culvert on Parcel 3 (total mitigated area of 3,718 square feet); total proposed mitigation area is 15,554 square feet. The Applicant’s consultant submitted that the primary strategy of road removal from the wetland buffer on Parcel 1 and locating it further away from Wetland A was selected because it presents the greatest opportunity to create lift in wetland functions and values, which would necessarily improve over current conditions. Noise dampening, light shielding, sediment retention, water quality, habitat structure, and overall aesthetics are expected to significantly improve for the wetland. Concentrating mitigation in this area reduces the likelihood that smaller areas of localized “spot” mitigation would have a lower rate of success. According to the consultant, mitigation is not proposed where the existing road crosses Wetland WRU-D because both sides of the roadway in that wetland and buffer are already well vegetated with native trees and shrubs, presenting little opportunity for

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<sup>4</sup> The record contains no evidence of any mapped critical areas on Parcel 4.

<sup>5</sup> The impacts were quantified by comparing a survey of the road prism by Mtn 2 Coast LLC completed before maintenance activities to current road conditions, based on current buffer widths required by Thurston County. *Exhibit 5.1, Attachment B.*

improvement through mitigation. Further, Wetland A on Parcel 1 is hydrologically connected to Wetland D on Parcel 2, which the consultant contended means concentrating wetland buffer mitigation on Parcel 1 meets the “on-site & in-kind” mitigation practice preferred by regulatory agencies. The proposal is also submitted as being consistent with the watershed approach to wetland mitigation because both A and D are in the Thompson Creek watershed. Proposed stream buffer mitigation was concentrated in the immediate vicinity of the road crossing, which had been previously cleared of small trees and shrubs and is presently being overtaken by invasive species. This area was selected for buffer enhancement for the same reasons: because this area presents the best opportunity for removal of invasive species and subsequent installation of native trees and shrubs, which are anticipated to have the highest chance of successfully providing a lift of stream functions. *Exhibit 5.1, pages 12-16.*

12. Mitigation areas would be monitored, for a 10-year period, once a year during the growing season between March 15 and May 15, with monitoring photo stations established to document plant growth over time. Individual plants would be counted to assess the percentage survival rate; the mitigation plan’s goal is 100% survival of plantings. Unsuccessful plants would be replaced as needed. Monitoring reports would be submitted to Thurston County by December 31st in years 1, 2, 3, 5, 7, and 10. The first report would serve as the “as-built” report and would contain the necessary drawings. The mitigation areas would be owned, maintained, and managed by the underlying property owner, unless otherwise assigned.<sup>6</sup> Signage would be installed along the outer perimeter of the mitigation area at 100-foot intervals, to be maintained by the property owner to raise awareness and minimize disturbances. *Exhibit 5.1.*
13. The Applicant proposes to complete mitigation prior to or at the time of final plat for the two approved large-lot subdivisions. The revised mitigation plan includes the information necessary to support the Applicant’s future submittal of a surety, as required in TCC 24.70.020, to ensure completion and success of the required mitigation. The Applicant proposes to place the mitigation area and all remaining on-site buffers and critical areas under a recorded deed restriction or a conservation easement. The regulated critical areas and buffers would be protected from future platting activities. *Exhibit 5.1.*
14. The project would result in no direct impacts to stream or wetlands. The previous road maintenance work currently being mitigated was confined to the established road prism. The Applicant’s consultant submitted that the proposed mitigation was designed to result in a higher level of functions and values the current conditions, and thus would achieve the necessary standard of no net loss of functions and values. *Exhibit 5.1; Timothy Haderly Testimony.* Planning Staff submitted that the proposed mitigation plan meets the requirements of the critical areas ordinance consistent established in TCC 24.30.075 and

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<sup>6</sup> DRP Holdings LLC (Parcel 2 Owner) and Tenino Land Company, LLC (Parcels 1, 2, 4, & 5 Owner) have common individual member owners, who have stated that they would enter into all necessary agreements to allow completion of the mitigation and permanent protection of the mitigation area as described in the mitigation plan prior to permit issuance. *Exhibit 5.1.*

concurred that the proposed mitigation would result in a condition of no net loss of functions and values for the affected critical areas consistent with TCC 24.01.035.B. *Sharon Lumbantobing Testimony; Exhibit 6.*

15. The subject property was evaluated for the presence of the Mazama pocket gopher, which is listed under the Endangered Species Act as a threatened species, and for the presence of prairie habitat, which is regulated by Thurston County. The conclusion of the study was that none of the parcels contain currently occupied or viable pocket gopher or prairie habitat. *Exhibit 1.K.*
16. Thurston County Community Planning and Economic Development Department acted as lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA). Following review of the application materials, critical area studies, and the completed environmental checklist, the County issued a determination of non-significance (DNS) on September 22, 2021. *Exhibit 1.H.* The DNS includes notes identifying requirements with respect to stormwater management, Mazama pocket gopher protection, archaeological resources, toxics cleanup, and other items, which were incorporated into the conditions of RUE approval. The DNS notes, which are not conditions but do reference requirements that apply to the project based on regulations under other agencies' jurisdiction, address SEPA comments submitted by the Department of Ecology, and by the Squaxin Island, Nisqually, and Chehalis Tribes, which requested to be kept apprised of any cultural resources uncovered during development. *Exhibits 1, 1.H, 1.S, 1.T, 1.U, 1.V, 1.W, 1.X, 1.Y, and 1.Z.*
17. Notice of the open record hearing was mailed to property owners within 500 feet of the site on October 21, 2021 and published in *The Olympian* on October 29, 2021. *Exhibits 1 and 1.A.*
18. The owner of a parcel to the southwest of the subject parcels containing downstream wetlands submitted public comment expressing concerns regarding alteration or modification of the roadway through wetlands or streams, as well as impacts from future development of the parcels, and the potential for resulting impact to wetland ecosystems, wildlife habitat, and/or the hydrologic regime of the overall wetland complex. *Exhibit 1.AA.*
19. Addressing these concerns at hearing, Applicant representatives reiterated that the two subdivisions are already approved and that the proposal is anticipated to improve overall ecological function for the wetlands and stream on site. *Testimony of Timothy Haderly and Heather Burgess.*
20. Following close of the public hearing, the County's Hearing Examiner requested supplemental evidence clarifying discrepancies in the record. *Exhibit 4.* Applicant representatives submitted the following summary of the reason that the discrepancy had arisen in the materials offered at hearing:



The Hearing Examiner noted discrepancies between [initially proposed] Exhibits 1.E (Revised Roadway Plans) and 1.J (Critical Areas Buffer Mitigation Plan) related to the total area of wetland buffer impacts and corresponding wetland buffer mitigation. Upon review, the Applicant has determined that these discrepancies were the result of the wetland buffer for wetland WRU-D increasing from 200' to 240' over the course of the application review without corresponding updates to the roadway plans being provided for the record[.]

Based on comments received from Thurston County staff on July 8, 2021, a number of the documents submitted to Thurston County in January 2021 were revised and resubmitted. This included a new Wetland, Stream & Prairie Report prepared by SCJ Alliance dated August 2021 (2021 SCJ Report). In the 2021 SCJ Report, WRU-D's scoring was revised to a Category III Wetland – with a Habitat Score of 7. The increase of the Habitat Score from 6 to 7, resulted in wetland buffer increase from 200' to 240', increasing the total buffer impact from 14,382 SF to 15,255 SF. The correct buffer area impact is 15,255 SF and the correct proposed buffer mitigation area is 15,554 SF.

*Exhibit 5.2.*

21. Having reviewed the Applicant's supplemental submittals, County Planning Staff concurred that the discrepancy had arisen from the requested reclassification of WRU-D such that it required a 240-foot buffer. Staff submitted an additional recommended condition addressing the fact that the parcel where mitigation is proposed (Parcel 1) is not the same parcel where impacts to the stream buffer have occurred (Parcel 3), and that the two parcels are not under identical ownership. *Exhibit 6.*
22. Having reviewed the complete materials and heard all testimony offered at hearing, Planning Staff maintained their recommendation of approval subject to conditions in the staff report. *Exhibits 1 and 6; Sharon Lumbantobing Testimony.* Applicant representatives waived objection to the recommended conditions, including Staff's post-hearing condition addressing the different ownerships between the parcel where impacts to the stream occurred and the parcel where they would be mitigated. *Timothy Haderly Testimony; Exhibit 7.*

## CONCLUSIONS

### **Jurisdiction**

The Hearing Examiner is granted jurisdiction to hear and decide applications for Reasonable Use Exceptions pursuant to TCC 2.06.010(F) and TCC 24.45.030.

### **Criteria for Review**

Pursuant to TCC 24.45.030, the Hearing Examiner shall grant the reasonable use exception if:

- A. No other reasonable use of the property as a whole is permitted by this title; and
- B. No reasonable use with less impact on the critical area or buffer is possible. At a minimum, the alternatives reviewed shall include a change in use, reduction in the size of the use, a change in the timing of the activity, a revision in the project design. This may

include a variance for yard and setback standards required pursuant to Titles 20, 21, 22, and 23 TCC; and

- C. The requested use or activity will not result in any damage to other property and will not threaten the public health, safety or welfare on or off the development proposal site, or increase public safety risks on or off the subject property; and
- D. The proposed reasonable use is limited to the minimum encroachment into the critical area and/or buffer necessary to prevent the denial of all reasonable use of the property; and
- E. The proposed reasonable use shall result in minimal alteration of the critical area including but not limited to impacts on vegetation, fish and wildlife resources, hydrological conditions, and geologic conditions; and
- F. A proposal for a reasonable use exception shall ensure no net loss of critical area functions and values. The proposal shall include a mitigation plan consistent with this title and best available science. Mitigation measures shall address unavoidable impacts and shall occur on-site first, or if necessary, off-site; and
- G. The reasonable use shall not result in the unmitigated adverse impacts to species of concern; and
- H. The location and scale of existing development on surrounding properties shall not be the sole basis for granting or determining a reasonable use exception.

### **Conclusions Based on Findings**

1. No other reasonable use of the property as a whole is permitted by the critical areas ordinance. The parcels are zoned for rural residential use, but because a wetland and stream bisect the central parcels, it would not be possible to construct an access road that avoids crossing them. *Findings 3, 4, 5, 6, 7, 8, 9, and 23.*
2. No reasonable use with less impact on the critical area or buffer is possible. Residential use is permitted outright in the RRR 1/5 zone, and residential development has been approved on Parcels 1 and 4; however, the only way to access Parcel 4 is to use the existing former logging road for residential access, which due to placement of the wetlands and stream results in unavoidable impacts to the critical areas and associated buffers. The record submitted would not support a conclusion that agriculture (as the other primary permitted use in the zone) would result in less impact to the extensive critical areas. The southernmost extent of the road would be relocated as far from WRU-A as possible without intruding into other regulated buffers. A minimum buffer of 150 would be maintained. Impacts associated with the crossing of the WRU-D and stream buffers are unavoidable, because of the route of the former logging road that is being repurposed for residential access, but these impacts would be mitigated per the submitted mitigation plan to a point of no net loss in wetland or stream functions and values. *Findings 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, and 22.*
3. As conditioned, the requested development would not result in damage to other property and would not threaten the public health, safety, or welfare on or off the development

site, or increase public safety risks on or off the subject property. Conditions of approval address erosion control, stormwater management, and pollution, and include a stop work/notice requirement if cultural resources are uncovered during development. *Findings 14, 16, 18, 19, and 22.*

4. The proposed reasonable use is limited to the minimum encroachment necessary to prevent denial of all reasonable use of the property. No expansion of the existing logging road footprint/road prism is proposed. As described in Conclusions 1 and 2, it would not be possible to eliminate the encroachment of the road into the WRU-D and stream buffers, as these features bisect the property. Being denied the right to cross the buffers would prevent access to the northern 40-acre parcels. *Findings 4, 5, 6, 7, 8, 9, 10, and 22.*
5. As conditioned, the proposed reasonable use would result in minimal alteration of the critical area. The southern reach of the road would be relocated to the west in order to provide a 150-foot buffer from Wetland A. It is not possible to provide the full 200-foot buffer from Wetland A without encroaching into the buffer for Wetland D. The corridor of the relocated/former road would be restored to forested wetland buffer. No road widening would be required to accommodate future residential development. *Findings 4, 5, 6, 7, 8, 9, 10, 20, and 22.*
6. As conditioned, the proposal ensures no net loss of critical area functions and values. The conditions of approval require the mitigation to be implemented on the site prior to final inspection of the roadway. *Findings 14, 21, and 22.*
7. The use would not result in unmitigated adverse impacts to any known species of concern. *Findings 15 and 16.*
8. The location and scale of existing development is not the sole basis for granting the reasonable use exception. The RUE is needed due to the extensive critical areas and buffers on site, which would prevent access to development of any scale. *Findings 4, 5, 6, 7, 8, and 9.*

### **DECISION**

Based on the preceding findings and conclusions, the request for a reasonable use exception is **GRANTED**, subject to the following conditions:

1. Prior to construction permit issuance, the Applicant shall provide the County with a legally binding agreement between the owners of Parcel 2 (#21736100401) and Parcel 1 (#21736100400) to allow the completion of mitigation and permanent protection of the mitigation area as described in the mitigation plan in the record at Exhibit 5.1.
2. Prior to construction permit issuance, the Applicant shall provide a surety agreement and bond, in compliance with TCC 24.70, to ensure the proposed monitoring and maintenance portion of the mitigation report is completed successfully. The amount of

the bond is to be 125% of the cost of mitigation and monitoring plan, which is \$78,250 (Exhibit 5.1).

3. Prior to construction permit issuance, erosion control shall be installed and inspected by Thurston County Community Planning and Economic Development Staff. Photos may substitute for inspection. Erosion and stormwater controls, (i.e., silt fencing and/or straw wattles) must be installed landward of the reduced buffer such that uncontrolled storm water cannot reach the adjacent wetlands.
4. Prior to or in conjunction with the start of any construction, all applicable regulations and requirements of the Thurston County Public Health and Social Services Department, Public Works Department, Fire Marshal and Thurston County Community Planning and Economic Development Department shall be met.
5. Prior to construction, the Applicant shall obtain approval of an encroachment permit and construction permit from the Thurston County Public Works Department.
6. Prior to final inspection of the roadway, the Applicant shall perform all mitigation, monitoring, and reporting as stated in the Critical Areas Buffer Mitigation Plan for Site Access off 123rd Ave SE, Yelm, WA (Loowit Consulting Group, dated December 10, 2021 in the record at Exhibit 5.1). The Applicant shall provide details on the monitoring of success of the mitigation after initial plantings consistent with TCC 24.35.017.
7. Prior to road construction permit issuance, all wetland and stream buffer fencing and signage shall be installed. The Applicant shall contact Community Planning and Economic Development staff for a site inspection upon completion of the wetland and stream buffer fencing and signage and the inspection must receive approval prior to road construction permit issuance.
8. This project shall comply with the Stormwater Management Manual for Western Washington, developed by the Washington Department of Ecology. A construction stormwater permit from the Washington State Department of Ecology may be required. Information about the permit and the application can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/permit.html>. It is the Applicant's responsibility to obtain this permit if required.

The following construction activities require coverage under the Construction Stormwater General Permit:

1. Clearing, grading and/or excavation that results in the disturbance of one or more acres and discharges stormwater to surface waters of the State; and
2. Clearing, grading and/or excavation on sites smaller than one acre that are part of a larger common plan of development or sale, if the common plan of development or sale will ultimately disturb one acre or more and discharge stormwater to surface waters of the State.

- a) This includes forest practices (including, but not limited to, class IV conversions) that are part of a construction activity that will result in the disturbance of one or more acres, and discharge to surface waters of the State; and
- 3. Any size construction activity discharging stormwater to waters of the State that Ecology:
  - a) Determines to be a significant contributor of pollutants to waters of the State of Washington.
  - b) Reasonably expects to cause a violation of any water quality standard.

If there are known soil/ground water contaminants present on-site, additional information (including, but not limited to: temporary erosion and sediment control plans; stormwater pollution prevention plan; list of known contaminants with concentrations and depths found; a site map depicting the sample location(s); and additional studies/reports regarding contaminant(s)) will be required to be submitted. For additional information on contaminated construction sites, please contact Carol Serdar at [Carol.Serdar@ecy.wa.gov](mailto:Carol.Serdar@ecy.wa.gov), or by phone at (360) 742-9751.

Additionally, sites that discharge to segments of waterbodies listed as impaired by the State of Washington under Section 303(d) of the Clean Water Act for turbidity, fine sediment, high pH, or phosphorous, or to waterbodies covered by a TMDL may need to meet additional sampling and record keeping requirements. See condition S8 of the Construction Stormwater General Permit for a description of these requirements. To see if your site discharges to a TMDL or 303(d)-listed waterbody, use Ecology's Water Quality Atlas at: <https://fortress.wa.gov/ecy/waterqualityatlas/StartPage.aspx>.

The Applicant may apply online or obtain an application from Ecology's website at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/> - Application.

Construction site operators must apply for a permit at least 60 days prior to discharging stormwater from construction activities and must submit it on or before the date of the first public notice.

- 9. If contamination is suspected, discovered, or occurs during the proposed SEPA action, testing of the potentially contaminated media must be conducted. If contamination of soil or groundwater is readily apparent, or is revealed by testing, Ecology must be notified. Contact the Environmental Report Tracking System Coordinator for the Southwest Regional Office (SWRO) at (360) 407-6300. For assistance and information about subsequent cleanup and to identify the type of testing that will be required, contact Mohsen Kourehdar with the SWRO, Toxics Cleanup Program at (360) 407-6256.
- 10. Wetland fill requires a permit approval from the Army Corps of Engineers. The Applicant shall secure this permit prior to any construction work within a wetland.
- 11. All grading and filling of land must utilize only clean fill. All other materials may be considered solid waste and permit approval may be required from the local jurisdictional health department prior to filling. All removed debris resulting from this project must be disposed of at an approved site. Contact the local jurisdictional health department for

proper management of these materials.

12. The Applicant shall remove all construction related debris to an approved site (landfill or recycling center) outside of critical areas and their buffers.
13. If archaeological artifacts are observed during any phase of the project, all work shall be immediately halted. The State Department of Archaeology and Historic Preservation, the Thurston County Community Planning & Economic Development Department (CPED) and affected Tribes shall be contacted to assess the situation prior to resumption of work. The Inadvertent Discovery Plan for Thurston County<sup>7</sup> shall be implemented for the project as necessary.
14. The proposed project is subject to compliance with the following policies and regulations, including any applicable mitigation requirements: Thurston County Comprehensive Plan, Zoning Ordinance (TCC 20), Critical Areas Ordinance (TCC 24), Stormwater Drainage Design and Erosion Control Manual (TCC 15.05), Uniform Building Code (TCC 14), State Environmental Policy Act (SEPA) Ordinance (TCC 17.09.)
15. This property is mapped with soils that often contain the presence of priority species and habitat, which are protected by TCC 24, Critical Areas Ordinance. The requested development activity is planned to take place on a soil type, or area, which may provide habitat for the Mazama pocket gopher, or where the Mazama pocket gopher has either been found or is suspected to be located. Approval of this and other County permits may be superseded by federal law. If any are found during site development, the applicant should contact the US Fish and Wildlife Services. SJC Alliance conducted a site visit and determined the proposal would not result in take, or is very unlikely to result in take, of federally listed Mazama pocket gophers. Future clearing, grading, or other development activity outside of the approved development area is subject to review and approval of applicable review authority.

**DECIDED** January 3, 2022.



Sharon A. Rice  
Thurston County Hearing Examiner

NOTE: Pursuant to TCC 22.62.020(C)10, affected property owners may request a change in valuation for property tax purposes.

**THURSTON COUNTY**  
**PROCEDURE FOR RECONSIDERATION AND APPEAL**  
**OF HEARING EXAMINER DECISION TO THE BOARD**

**NOTE:** THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.\* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

**The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).**

**A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)**

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

**B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)**

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Community Planning & Economic Development Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

**C. STANDING** All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

**D. FILING FEES AND DEADLINE** If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$804.00** for a Request for Reconsideration or **\$1,093.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

\* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.



<b>Project No.</b> _____ <b>Appeal Sequence No.:</b> _____
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**Check here for:**                    **RECONSIDERATION OF HEARING EXAMINER DECISION**

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

**Check here for:**                    **APPEAL OF HEARING EXAMINER DECISION**

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW \_\_\_\_\_  
 on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ relating to \_\_\_\_\_

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1.     Zoning Ordinance \_\_\_\_\_
2.     Platting and Subdivision Ordinance \_\_\_\_\_
3.     Comprehensive Plan \_\_\_\_\_
4.     Critical Areas Ordinance \_\_\_\_\_
5.     Shoreline Master Program \_\_\_\_\_
6.     Other: \_\_\_\_\_

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

**STANDING**

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

\_\_\_\_\_  
APPELLANT NAME PRINTED

\_\_\_\_\_  
SIGNATURE OF APPELLANT

Address \_\_\_\_\_

\_\_\_\_\_  
Phone \_\_\_\_\_

**Please do not write below - for Staff Use Only:**

Fee of  \$804.00 for Reconsideration or \$1,093.00 for Appeal. Received (check box): Initial \_\_\_\_\_ Receipt No. \_\_\_\_\_  
 Filed with the Community Planning & Economic Development Department this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_.